

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR Kent COUNTY

STATE OF DELAWARE)	
v.)	No. _____
<u>Monty C Pepper</u>)	(to be supplied by Prothonotary)
Name of Movant on Indictment)	
<u>Monty C Pepper</u>)	
Correct Full Name of Movant)	

MOTION FOR POSTCONVICTION RELIEF

MOTION

1. County in which you were convicted Kent
2. Judge who imposed sentence James Vaughn Jr
3. Date sentence was imposed 4/15/05
4. Offense(s) for which you were sentenced and length of sentence (s):
2nd 20 year suspended after 10 LV 3 counts of
com Child porn 12 mo / 2 year Prob 3 2 counts Poss Child por 6 mo / 2 / 3
5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the judgment(s) under attack in this motion? Yes () No ()
If your answer is "yes," give the following information:
Name and location of court(s) which imposed the other sentence(s):
Superior Court Kent County
- Date sentence(s) imposed: ~~1 yr 3 probation~~ Jun 22/2005
- Length of sentence(s) 1 yr Lv 3 probation
6. What was the basis for the judgment(s) of conviction? (Check one)
 - Plea of guilty ()
 - Plea of guilty without admission of guilt ("Robinson plea") ()
 - Plea of nolo contendere ()
 - Verdict of jury ()
 - Finding of judge (non-jury trial) ()
7. Judge who accepted plea or presided at trial James Vaughn Jr
8. Did you take the witness stand and testify? (Check one)
 - No trial () Yes () No ()
9. Did you appeal from the judgment of conviction? Yes () No ()
If your answer is "yes," give the following information:
Case number of appeal _____
Date of court's final order or opinion _____

10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion(s) or petition(s) seeking relief from the judgment(s) in state or federal court?

Yes () No () How many? (L)

If your answer is "yes," give the following information as to each:

Nature of proceeding(s) Sentence Modification

Grounds raised due To being pro se and in Segregated Custody I could not file a proper and effective Motion due To restrictions To Law Library

Was there an evidentiary hearing? no

Case number of proceeding(s) _____

Date(s) of court's final order(s) or opinion(s) Denied

Did you appeal the result(s)? no

11. Give the name of each attorney who represented you at the following stages of the proceedings relating to the judgment(s) under attack in this motion:

At plea of guilty or trial Beth Savitz esq/Sheral Rush Milstead

On appeal n/a

In any postconviction proceeding n/a

12. State every ground on which you claim that your rights were violated. If you fail to set forth all grounds in this motion, you may be barred from raising additional grounds at a later date. You must state facts in support of the ground(s) which you claim. For your information, the following is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here): double jeopardy; illegal detention, arrest, or search and seizure; coerced confession or guilty plea; uninformed waiver of the right to counsel, to remain silent, or to speedy trial; denial of the right to confront witnesses, to subpoena witnesses, to testify, or to effective assistance of counsel; suppression of favorable evidence; unfulfilled plea agreement.

Ground one: Court Failed To Fulfill Superior Court Rule 32(3)

Supporting facts (state the facts briefly without citing cases):

Court Failed To Afford Parties an opportunity To rebut or comment on Presentence Report. Defendant has not seen or read The report or victim impact used AT sentencing

Ground two: State failed To fulfill recommendation agreed on plea

Supporting facts (state the facts briefly without citing cases):

As inducement To accept The plea The State agreed To make a recommendation at sentencing quote : The STATE agrees not To recommend more than 10 years LV AT sentencing . They did not T.I.S. 2-5-10

Ground three: denial of the right To effective assistance of counsel

Supporting facts (state the facts briefly without citing cases):

where as in ground One Counsel Failed To supply The defendant with Facts in The report "Presentence Report" failed To inform defendant of Rule 32 or attack courts Failure To Rule 32

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason(s) for not doing so: Grounds of ineffective Counsel

grounds suppression of favorable evidence , lack of investigation of evidence , mental condition were verbally brought up at sentencing continuance was denied and withdraw of Plea was denied defendants legal knolage To errors only now know Counsel Refuses To act As To errors That have brought To her attention EXHIBIT C A

Wherefore, movant asks that the court grant him all relief to which he may be entitled in this proceeding.

Signature of attorney (if any)

I declare the truth of the above under penalty of perjury.

Jan 30 2006

Date Signed



Signature of Movant
(Notarization not required)

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR Kent COUNTY

Monty C Pepper

C.A.NO. #

STATE of Delaware

Memorandum of law in support of
Rule 61 Motion for Post Conviction Relief

The defendant Monty Pepper Pro Se moves This Honorable Court pursuant To Superior Court Criminal Rule 61 To reverse his sentence and or upon defendant having been appointed counsel have The right To withdraw Plea or demand specific performance

The defendant was indicted on
The defendant entered a guilty plea To The Following

1st Del Code 11§772

2nd Del Code 11§ 1111

3rd Del Code 11§ 1109

Defendant Prays The court To accept This motion of post conviction 61.. Where it being some 60+ pages due To The Fact That D.C.C. Law Library has only 2 Typewriters and defendant is restricted To 8 hour a week access and is refused extra Time To Type and or ~~research~~ research By Head of Law Library E Johnson

To The Court

The following memorandum of legal arguments are submitted as questions of law nothing within this memorandum of law should be considered a opinion of the defendants lack of remorse or a belittlement of any act, charge, law, or judgement of this court

Defendant understands the serious nature of the offences which he has been charged

Defendant understanding the courts responsibility to deter future crime and public safety also understands the courts responsibility to fashion a sentence to the least restrictive sentence to assure the public safety and to make use of sentence alternatives such as rehabilitation mental health (sentencing Bench books)

Defendant also understanding the offence he is charged with has with it a burden of discredit which affects the judgement of the court. without a defence as other crimes hold the defendant counsel did fail to be a advocate for the defendant

Where the court has not taken into account the defendant addictions medical history or the truth where the plaintiff is concerned, where a lie detector would stop prosecutions such as the defendants. The defendant does hold that his son Matthew is the most important and the damage done has had negative affect on all who are involved defendant does beg for leniency from the court when all facts are properly brought before the court



Additional Grounds and supporting Facts

- 12 Ground Twelve: denial To right of affective Counsel Beth Savitz Failed To investigate and determin The meaning of Del Code 11s1109 "Transmit" and depict where depict is a same and lesser offence of Del Code 11s1111
- 13 Ground Thirteen: defendant denial of Fifth amendment and Sixth amendment rights where Counsel Failed To inform defendant of right of indictment, and Grand Jury selection or indictment language
- 14 Ground fourteen: Grand Jury failure To adhear To Superior Court Criminal Rule 7(4)(1) Language in 1K04030351-65 was not written in concise plain definitely written To show "dealing"
- 15 Ground fifteen: double jeopardy and "included and Lesser offence where each has a meaning That should be different where The Grand Jury should had higher fact Than "depict"
- 16 Ground SixTeen: ineffective Counsel Beth Savitz admitted she had never had a sex case before my case counsel was ineffective failed To file proper motions or prepair for court
- 17 Ground Seventeen: ineffective Counsel Beth Savitz refused To Talk To The defendant when called By D.C.C, defendant was told By a D.C.C, in Afte David Jan/20/06 That Beth Savitz said she was Too busy To Talk To The defendant
- 18 Ground Eighteen: defendants First Amendment Right denied and Taken as his voting right was Taken against Amendment and with out due Process
- 19 Ground Nineteen: defendant was charge and convicted of a "Violent Crime" with out due Process 14 amendment F

20 Ground Twenty : The Court revoked The Delaware Driver license with Due Process of The 14th Amendment and further The law of revocation is not rational related To The instant case

21 Ground Twentyone : The law pertaining To sexual conduct age "knowingly" consent consent marriage as a exemption To law Thats Del Codes 13s123 11s262 11s 720 - 722

Affirmative Defence of Social Compensation

22 Ground Twenty Two : The use of The Bible Phrase "Do you swear on The Bible of The one and only all mighty God" at swearing in against The 1st Amendment and 6th Amendment on bias jury and This prejudice The defendant bias Court

23 Ground Twenty Three :

Ground 1

Defendant argues that he was denied his right to due process and equal protection guaranteed by the Fourteenth Amendment of the United States Constitution during the sentencing on 4/15/2005 where the court erred by "not" affording the defendant or defendant's counsel an opportunity to comment on the presentence report as required by Rule 32(3) Superior Court Rules and fundamental fairness.

Rule 32 (3) reads as follows:

(3) Disclosure at least 7 days before imposing sentence the court "shall" allow the defendant's counsel and the attorney general to read the presentence investigation report including the information required by subdivision (c)(2) but not including any final recommendation as to sentence. The court "shall" afford the parties an opportunity to comment on the report and in the discretion of the court to present information relating to any alleged factual inaccuracy contained in it.

Defendant has not read the presentence report or victim impact statement. The use of uncorroborated evidence for sentencing did cause prejudice as to sentence.

Due To counsels ineffectiveness counsel failed To informe The defendant of what The presentence report procedure's were pertaining To Rule 32 and failed To informe The defendant of The statements of evedence contained in The report . There for causing prejudice at sentencing and denieing right of due process

in reflecting Moore V State of Delaware Doc# 517 (2004) where The Supreme Court ruled as follows

: in short Rule 32 requires disclosure of every portion of The presentence report except final recommendation as To sentence . The redacted presentence report That was made available To "moore" prior To sentence did not comply with Rule 32 in other contexts failure To adhear To a court rule might not constitute Reversible error , Here however "moore" right To know what was in The "Burris" statement exist independant of any rule

This court has held That a "defendant" must be given some opportunity To explain or rebut any uncorroborated evedence upon which The court relies in makeing a sentence determination as a matter of fundamental fairness "

The Trial court stated That it Throughly reviewed The report . Where (moore) should have been given The opportunity To address Burris statement before being sentenced IT did cause prejudice if The court relies on uncorroborated facts in a victim's statement The statement can not be withheld from The defendant

As in The instant case The defendant has not seen The report and as in The (Moore) case The presentence report was given To The prosecution and was used in determining The sentence . And The defendant was not given a opportunity To address any statements in The report there for Caused prejudice

There for The Court erred

The defendant's counsel also erred by not objecting To The error and as The october 20th 2005 letter from counsel To The defendant shows That counsel is ignorant To Rule 32 where counsel describes The rights To The report is incorrect as well shows of possibal error and shows no attempt To correct The error . (LETTER EXHIBIT A) by

Counsel was made aware of the error and as reflected in The oct 20 letter counsel admits That she has not seen The pre sentence where if she had errors would had not happen futher more The factual basis for The plea were not established The defendant did not admit To Touching The victims vagina as she says was done as addressed in ground (3) Three

Ground 2

Defendant argues that he was denied due process where the state failed to fulfill the recommendation agreement as put forth on the plea. The recommendation was not fulfilled did prejudice the defendant at sentencing and did denied due process under the Constitution's Fifth Amendment and the Fourteenth Amendment.

The agreement of state to the recommendation as follows:

- The state agrees not to recommend more than 10 years LVV at sentencing; This agreement was in part the inducement to accepting the plea also the T.I.S. sheet shows that the defendant was told 2-5 years up to 10 and minimum mandatory. The mandatory was crossed out and counsel said that up to 90 days a month good time no mandatory as the T.I.S. sheet will show (Exhibit B) T.I.S sheet inclosed and copy of plea (Exhibit C) inclosed. First 2 years no good time.

Constitutional law 265.5

Breach of plea agreement implicates constitutional guarantee of due process

USCA Const Amend 5 Const Amend 14
Byrd v US 801 A2d 28 (2002), Royer v US 772 A2d 837 (2001)
Criminal Law 1181 criminal law 223.1 (2) criminal law 223.1
US v Brown 500 F2d 325

where at the plea colloquy the counsel for the defendant made the court aware of the agreement as required and the defendant being aware that the court is not bound by the recommendation however the states failure to fulfill

There agreement may have with good probability made a difference at sentencing as the sentence was increased defendant argues That as inducement, counsel for the defendant stated That the states recommendation would usually persuade the court to stay within that recommended sentence and the defendant anticipated a "full hearted effort" by the state to fulfill the agreement as counsel for the defendant assured him they would if the defendant accepted the plea a contract

At one point counsel stated the state would cap the sentence which was untrue This was heard by the defendants Father Richard Pepper

Because the state failed to fulfill the agreement of the recommendation did cause prejudice where the defendant received 13 1/2 years over the maximum sentence agreed upon in the plea and was anticipated by the defendant

crim law 1181

where state failed to keep a commitment concerning sentence recommendation on a guilty plea the United States Supreme Court would remand the case to state courts to decide whether circumstances of case required only that there be specific performance of the agreement on the guilty plea or whether circumstances required that petitioner be granted opportunity to withdraw his guilty plea

Fed Rule Crim Proc rule 11 . . . 18 U.S.C.A.

Due process of law demands that when a plea rest in any significant degree on a promise of agreement of the prosecutor so that it can be said to be part of the inducement or consideration, such promise must be fulfilled if the promise can not be fulfilled and the deviation is material. The waiver of constitutional rights that a guilty plea represents is invalidated and cannot be enforced.

U.S.C.A. const Amend 14 Byrd v US 801 A2d 28 (2002)

Due process of law demands that when a plea rest in any significant degree on a promise or agreement of the prosecutor so that it can be said to be part of the inducement or consideration it must be fulfilled.

Royer v US 772 A2d 837 (2001)

Holding that where the prosecutor promised to recommend a particular sentence the mere half hearted recitation of a suggested sentence would not satisfy the plea agreement.

US v Brown 500 F2d 375 (4 Cir 1974)

688 F2d 31 (1983)

Constitutional Law 265.5

Breach of plea agreement implicates constitutional guarantee of due process

U.S.C.A. Const Amend 5 Const Amend 14

further more The failure of Prosecution To fulfill The agreement of recommendation was not accidental and possibly was The intent not To do so

defendant Through research investigating case law has found cases where a Prosecution in a case used The same wording of recommendation as prosecution used in The instant case There The use of the wording "The state agrees" not "To recommend" was purposely used To deceive To intice a plea and Then not fulfill The recommendation because of The word "not"

if in The instant This was The intent of The prosecution To deceive The defendant and The defendants counsel , This Trickery would show The vindictive behavior by The prosicution , as well as ineffectiveness of Counsel where defendant under The sixth amendment has a right To effective counsel " prosecutorial vindictiveness is addressed in "ground(6) six" in The reffered To cases The Supream Court Found That The deception was unjust and The wording was against The spirit of The plea

under standing That The Corut is not bound by recommendation The fact That The agreement was not fulfilled did cause prejudice where if The state had made a full harted effort The probability That The sentence would had been different

Ground Three

Defendant argues that he was denied his right to effective assistance of counsel guaranteed by the Sixth Amendment of the United States Constitution during sentencing, where Counsel Sheryl Rush Milsted failed to object to, or address the procedural error at sentencing where the court's failure to adhere to Rule 32 caused denial of due process and fundamental fairness to the defendant and did cause prejudice.

Defendant argues that if not for counsels errors
The defendants sentence would have been different

Defendant argues that Counsel's representation fell below an objective standard of reasonableness and that Counsel's inadequate performance at and before sentencing concerning the presentence report and victim impact statement under Rule 32 Supreme Court Rules does fall below the Strickland standard in determining the effectiveness of counsel. Strickland v Washington 104 SCt 2052.

Where counsel failed to allow the defendant to know what the presentence report or victim impact statement held as to evidence, that would be used in deciding the sentence the defendant would receive.

Where Counsel failed To inform The defendant of Rule 32 or The defendants right To address The

evidence in the presentence report or victim impact statement or the right to rebut uncorroborated evidence at sentencing within these reports

These errors by counsel when the court failed to fulfill Rule 32 as described in Ground(1) did cause prejudice as to sentence and rights of the defendant

As the enclosed letter dated Oct 20 2005 when the defendant after hours of research realized that there was an error defendant requested by letter copy's of the plea agreement and presentence report and informed counsel of the errors (Exhibit A)

The Oct 20 2005 letter, was counsels response where on line one it questionable if counsel has ever seen the plea "This is addressed in other grounds" but on lines 4-7 the counsel is in error with regards to Rule 32 and counsel "is aware" of a possible error by the court and counsel, on line 9-10 counsel shows lack of concern actually insinuates that the defendant should acquire transcripts him self this in proof of counsels not being an advocate for the defendant

Line 1 I looked through the file but could not locate a copy of the Plea Agreement

Line 4-7 with regard to the presentence report that is produced for the date of sentencing only Attorneys are not permitted to make copy's of it nor to share

IT with any one besides The client on The sentencing date after which IT must be returned To The Court However if you have a copy of your sentencing colloquy Than you can ~~review~~ review it To see if The Court erred

Line 9-10 if you should as you would do so inform pauperis so That it would be produced with out any cost To you (This is in concern with Transcripts)

"Before imposing sentence The court shall"

Rule 32 (A) 1 A The Court Shall

(A) determine That The defendants counsel or when The defendant acting pro se The defendant have had an opportunity To read The presentence investigation made available pursuant To subdivision (d)(3)

Rule 32 (e)(3)

Disclosure at least 7 days before imposing sentence The court shall allow The defendants counsel and The attorney General To read The presentence report including The information required by subdivision (e)(2) but not including any final recommendation as To sentence The court shall afford The parties an opportunity To comment on The report and in The discretion of The court To present information relating To any alleged factual inaccuracy contained in IT

As I have shown by The letter from counsel compared To The Rule 32 That counsels knolage

of proper procedure concerning court procedures Rule 32 (a)(1) and Rule 32 (c)(3) did in fact fall far below the Strickland standard

Criminal Law 641 . 13 (1)

To succeed on a claim of ineffective assistance of counsel defendant must not only make concrete allegations of cause and actual prejudice but he or she also must substantiate them

U.S.C.A. Const Amend 6

Criminal Law 641 . 2

Ineffective assistance of counsel constitutes "cause" for failure to raise challenge prior to collateral review under statute providing for correction of sentence

28 USCA § 2255 U.S.C.A. Const Amend 6

Criminal law 641 . 3

Defendant is entitled to reasonably competent assistance of counsel at each stage of the proceedings from pre plea investigation to preparation to advocacy at sentencing

U.S.C.A. Const Amend 6

As shown any reasonable counsel should have knowledge to defend their client, when counsel falls below a reasonable standard of competence as it does in the instant case this affects professional decisions and legal choices that prejudice the defendant in getting effective counsel and prejudice the outcome of the sentence and plea and is against the 6th Amendment and falls far below the Strickland standard

Ground Four

Defendant argues That he was denied his right To effective assistance of counsel guaranteed by The Sixth Amendment of The United States Constitution during sentencing and under The Strickland standard

Where counsel Sheryl Rush-Milstead did at sentencing hearing fail To object or address The states failure To fulfill The agreement of recommendations set forth in The plea agreement, as a result The plea agreement was not fulfilled

The agreement of recommendation reads as follows quote : The State agrees not To recommend ~~more~~ more than 10 years at sentencing; (copy inclosed)

defendant as part of The inducement To accept The plea expected The state To fulfill This agreement where counsel (Beth Savitz esq) assured The defendant They would, and That The recommendation would help Persuade The court in The defendants favor at sentencing

Where as described in ground (2) The state did not fulfill There agreement, and The defendant was sentenced To 13½ years over The agreed plea .

defendant realizing That The court is not bound by a recommendation when however There is such a agreement and That agreement is not fulfilled There is a reasonable

probability That if it had been fulfilled The sentence would had been different

defendant contends That if not for The counsels failure To investigate and develope a complete knolage of The instant case and plea agreement as well as The T.I.S. sheet The out come of The sentencing would had been different as well as The Rule 3Z with draw of plea motion.

These errors and omissions Leaves in question of counsels effectiveness under The strickland standard where These errors were apperant and caused prejudice

The strickland court acknowledged That The Sixth Amendment imposes on counsel a duty To investigate because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options id AT 2060

Where The state may contend That The use of The word "not" in The recommendation as a defence and contend They fulfilled Therec agreement , This would only be evdiance of Trickery To mis lead or deceive The defendant into accepting The plea and would go against The ~~spirit~~ spirit of The rule of law

defendant contends that the errors and lack of professional legal decision's due to the lack of proper investigation by counsel did cause prejudice and did fall below an objective standard of reasonableness and there is a reasonable probability that but for counsels error the results of the defendant's sentence would have been different

Ground Five

Defendant argues That he was denied due Process guaranteed by The Fourteenth Amendment due To ineffective counsel. guarantee of The sixth Amendment of The United States Constitution a defendant is intITled To effective counsel and Superior Court Rule 11 (2) where Counsel failed To investigate and put fourth To The Court as a advocate for The defendant mitigating evidence , or act as a advocate at any level criminal Law 641.3

Defendant is entitled To reasonably competent assistance of counsel at each stage of The proceedings From pre plea investigation and preparation To advocacy at sentencing U.S.C.A. Const Amend 6

Defendant argues That due To counsel suppression of favorable evidence and mitigating evidence did cause prejudice and denial of due process right at and before sentencing

Defendants counsel made no attempt To investigate The defendants back ground work history family history or defendants son nighbors or family To establish mitigating evidence To support The defendant at sentencing "record will show"

Counsel for The defendant's failure To investigate These facts as well as failure To investigate The information within The presentence report did allow for no mitigating evidence To be presented at sentencing as The sentencing order would reflect (inclosed) There for no positive information was made known which did denie The defendant effective counsel as well as caused extream prejudice at

sentencing hearing

Counsel for the defendant did however order a Psycho-Forensic Evaluation. This was ordered "not to defend the defendant" but to show the defendant had no grounds to withdraw his plea on motion to withdraw. As a result Counsel for the defendant informs the court that the defendant was and did knowingly accept the plea, where the defendant made a claim of "emotional distress" and "major depression" which affected his judgement counsel denied that fact (sentence colloquy)

Where on page 2 of this report from 4/15/2004 through 11/15/2004 the defendant had sought help from Catholic Charities and was prescribed medication by Dr Borer for depression anxiety and stress. The report states that quote: Mr Pepper was not mentally or emotionally stable throughout this entire period in fact Catholic Charities indicated in their records that he was still in need of treatment and medication at the time treatment terminated 11/23/2004 : Exhibit (D)

Counsel for the defendant only made her "opinion" known not the facts within the Psycho-Forensic Evaluation. Counsel made "her own opinion" of the mental state of the defendant. Counsel did not make it known that the defendant was prescribed Paxil and Zyprexa (an anti-psychotic agent used to treat bipolar disorder).

Whereas at sentencing This psycho-Forensic Evaluation was again not brought To The attention of The Court when facts in The report could be helpfull To The defence of The defendant as To The mitigating facts

The Sentencing Recommendation in The report To was withheld from The court where The Evaluator James F Dunn MHS, CAC-AD "did make a recommendation That The defendant be considered for The "minimum" sentence allowable by statute" Exhibit D page 2

Counsels failure To effectively investigate and bring To The court mitigating facts and evidence in The psycho-Forensic Evaluation as well as evidence That an investigation of back ground of The defendant would have added positive mitigating facts and evidence in favor To The defendant This was no less Than ineffectiveness by counsel and fell far below any reasonable standard and if it weren't for counsel ineffectiveness The out come of The motion To withdraw plea as well as The out come of The sentence That The defendant received would had been different

unlike defense of duress To underlying criminal acts allegation of coercion at plea stage goes directly To voluntariness of plea and is proper basis for collateral attack

USV Williams 838 F Supp 99 DC

mitigating evidence That counsel failed To present To The court in a short form

defendant was a single father of his 9 year old son from 1995 when his son was 6 months old untill present

defendant was buying his home

defendant son had a stable environment

defendant was and has been employed

defendant did attend school functions Teacher meetings ect

defendant raised his son properly

and more These were just a few mitigating facts
The Counsel for The defendant failed To investigate There
are many more not listed

Also The defendant did have a addiction which also
could be presented To The Court but was not

Counsel's failure To investigate These facts would
had made compairing Facts in The presentence report
impossible

Counsel's failure To be an advocate where only
evidence To defeat The motion To withdraw plea
was entered into court no mitigating evidence

As required by The 6 Amendment a advocate is
a person who pleads on behalf of The defendant
Counsel Sheryl Rush Milstead did not fulfill This
Function required of her by law and The 6 Amendment

Ground Six

The defendant argues That he was denied due process guaranteed by The Constitution Fourteenth Amendment - due To prosecution misconduct

Where The defendant's ability To get a Fair Plea from The Prosecution was prejudiced by Prosecutorial Vindictiveness and misconduct

When on Feb 2004 where under agreement by defendant's Counsel , Prosecution , and Detective Wood of The state police The defendant upon a warrant for his arrest on charges # 0402012084 would be released on unsecured bail and not have To post bail, in exchange for The defendant Turning him self in . Which The defendant did . After The defendant was arrested , booked , and printed , Detective Wood informed The defendant's counsel That The Prosecution "reneged" would not follow The agreement and wanted a high secure bail

While at Troop 3 on Video Court counsel for The defendant made The Judge aware of The agreement and The fact The Prosecution was attempting To "renige" on The agreement . Detective Wood informed The Judge of The agreement and The fact That he and The Prosecution wished To renge on The agreement . The Judge however enforced The agreement and The defendant was released . Transcripts will show

Where on 4/05/2004 case # 0402012084 The

Case was consolidated into this case during that hearing due to the ineffectiveness and misconduct of the defendant's counsel. Bail was increased from \$0 to \$30,000 secured. This is addressed in following grounds of ineffective counsel Ground (11) The defendant lost placement of his son at this point which devastated the defendant and his son.

On 5/13/2005 as Motion For Modification of Bail counsel for the defendant at defendants request petitioned for visitation of the defendant's son Matthew Pepper 9 years old.

Prosecution in a manner which can only be described as vicious, vindictive, abusive, misconduct did in addressing the court did commit "perjure", lying to the court while at the same time bending over at the defendant in a threatening and demeaning manner directing the statements at the defendant instead of the court. This was witnessed by the sitting Judge Freud Andrea Maybee, Counsel, parents of the defendant's, counsel made no objection"

Prosecution in an abusive tone tells the court "if Mr Pepper would allow the state to question his son the state would allow Mr Pepper to visit his son at his (Mr Pepper's) mother's home but Mr Pepper has "refused" our requests to question his son."

This statement was a lie. The prosecution never asked furthermore Detective Wood did question the defendant's son illegally during a search warrant, without permission and asked sexual questions and questions about the instant case. This is addressed in ground (10) abuse of warrant.

Prosecution Then states That mr Pepper (The defendant) had over Two hundred images of "children having sex with adults" on his computer's again in a abusive tone

"This Too was a Lie" where There were not Two hundred images of such as Prosecution describes as The Prosecution which had discovery on 3/19/2004 and had To know That There were not, and That all images in question were deleted, and were not as Prosecution describes To deceive The Court in favor of The prosecution

"defendant's counsel makes no objection"

This deception of The Court and The abusive behaviour directed at The defendant was pure vindictiveness form The defendant exercising his rights To request visitation of his son who would be witness for The defendant

Prosecution after "The visitation was granted" did in The in The presence of The defendant , The defendants counsel, and The defendants Parents , Richard and Esther Pepper again in a vicious, vindictive, abusive, manner Tell The defendant That quote : oh! By The way we have witnesses who have seen mr Pepper (defendant) picking up his son at The bus stop : Then stamped out of The court room This To was a Lie

"defendant's counsel did nothing"

Prosecutions behaviour can only be described as vindictive misconduct or Prosecutorial vindictiveness and This vindictiveness had a direct "Prejudice" on The bargaining for a just Plea as well Prejudice any cooperation by

by The defendant and The state. Counsel for The defendant made no attempt To object To lies or actions of Prosecution

Prosecution at first case review demanded 10 years Level V defendant refused offer, There was no bargaining only a demand counsel

Prosecution at second case review again demanded 10 year level V defendant refused until defendants counsel said There were no way To win and The defendant would get 130 years in prison if The defendant lost

Counsel for The defendant Then said That The state would cap at 10 years no good time on first Two years and 90 days a year good time after That and defendant would only get up to 10 years if The court agreed . and That The state would at sentencing agree not To recommend more than 10 year

The defendant was told with The states recommendation The court would stick To The plea and That a presentence report would help . and That I should plea guilty To The court and To The presentence investigator

The defendant "did not" tell The presentence investigator That he put his hand on The victim's vagina or breast only That he Touched her . The defendant could not say he had done what The victim said it is a lie

To verify what The defendant puts fourth we request a hearing with Judge Andrea Maybee Mr Richard and Esther Pepper and Transcripts of hearing and presentence report

ca 4 va 1994

incertain cases where detrimental action was taken against defendant by government immediately following defendants exercise of rights court presumes improper vindictive motive on part of prosecutor

US v Fiel 35 F3d 997

Presumption of prosecutorial vindictiveness generally arises where defendant is reindicted after he or she exercises her legal right to trial de-novo following a successful post conviction appeal

not every improper remark by a prosecutor requires reversal but only that which prejudicially affects substantial rights of the accused
Sexton v State Del Super 397 A2d 540
397 A2d 540 (1979) Hughes v State Del Super 437 A2d 559 (1981)

The prosecutions misconduct as shown caused extreme prejudice in any bargaining for a plea and the ineffectiveness of counsel allowed for this prejudice without objection's of any kind if not for prosecutions misconduct the outcome of a plea agreement may have been different and counsels ineffective behaviour added to defendants duress

Ground Seven

defendant argues his rights To due process was denied as guaranteed by The United States Constitution

where The Court Failed To follow rule 11 (f) in Superior Court Rules denied due process To The defendant

Rule 11 (f) Determining accuracy of plea not withstanding The acceptance of a plea of guilty or nolo contendere The court should not enter a judgement upon such plea without making such inquiry as shall satisfy it That There is a factual basis for judgement

The Court Failed To establish factual basis where The defendant did not describe The acts of The Charge of offence of Del Code 11 § 772 at sentencing or before sentencing . The court not fulfilling Rule 32(3) where The presentence report which The Court relied upon for The factual basis To be presented was not and in The report The defendant did not admit To The offence 11 § 772 as described by The victim . The defendant said only quote I rolled over and Touched her . The defendant did not say That he Touched her vagina or any act of penetration . where That was not True and The victim is not being Truthfull and was physically Threatend by her aunt "Anna" when she was caught smoking

Ground Eight

Defendant argues that his right of due process of the Constitution's Fourteenth Amendment was denied and Double Jeopardy at sentencing under the Fifth Amendment of the United States Constitution.

Where the court's error is not fulfilling Superior Court Rule 32 as described in Ground (1) The result was a deviation from the accepted plea and in proper use of sentencing guidelines.

The Court's failure to include in the sentencing order mitigating facts or facts from the presentence report or any facts to support a increase of prison time level V over and above the plea agreement.

The Court's use of a aggravating fact of "crime against a child" is already included in the charge of Rape 2 Del Code 11 § 772 and guideline was already taken punishment into account, by adding this a second time is no less than Double Jeopardy where adding additional punishment for the same fact used for sentencing. This would be no different than being charged for the same crime twice and punished twice against the Fifth Amendment.

This improper use of the guidelines caused prejudice in the sentence the defendant received as well as being unjust and unfair and unconstitutional.

This error and the lack of reasoning of fact in the sentencing order does indicate a court with a closed mind which violates the intent purpose and spirit of Rule 32.

Del super 450 A2d 400 (1982)

Del Code 11 § 772 reads as follows

(h) The victim has not yet reached his or her sixteenth birthday and the defendant stands in the position of Trust authority or supervision over the child or is an invitee or designee of the person who stands in Trust authority or supervision over the child.

SENTENCING under 11s 772 Del Code Takes into account separately Sub section (h) with a 10 year sentence where Del Code 11&772 is a crime against a child as it describes and adding a second aggravating fact of crime against is a second punishment for the same crime.

i.e "unlike lets say assault or robbery where the crime description does not include a age limit and involvement of a child there the added fact used in sentencing 'a crime against a child' would not be a Fifth Amendment yet would still have to be proven or admitted to under the Sixth Amendment as a "fact of a crime" and as a fact of a crime a crime against a child is a fact of the crime under Del Code 11-772(h)

Double Jeopardy Clause

no person shall be subject for the same offence
 To be twice put in jeopardy of life or limb against
 reprobation for the same offence after aquittal protects
 against prosecution for the same offence after conviction
 protection against multiple punishment for the same
 offence U.S.C.A., Const Amend 5

9002 Definitions "child" shall mean an unmarried
 person who is under 18 years of age and shall include
 the stepchild foster child or adopted child of the victim or
 conceived prior to but born after the personal injury or death of
 the victim

11103 Definitions relating to children

(e) Child shall mean any individual 18 years of age
 or less for the purposes of §§ 1108 1109 1110 1111 and 1112a
 of this title "child" shall also mean any individual
 who is intended by the defendant to appear to be 14
 years of age or less

Del Code 11 § 728 (h) reads as follows

(h) The victim has not yet reached his or her sixteenth
 birthday and the defendant stands in the position of trust
 authority or supervision over the child or is an invitee or
 designee of the person who stands in trust authority or
 supervision over the child

This describes a crime against a child and

as a fact of the crime and a punishment of that crime includes the fact of "crime against a child". This can not be a added fact where aggravating factors are just that facts and as the Sixth Amendment requires any evidence or uncorroborated evidence must be presented to the defendant, if it is used to or at sentencing.

Ground Nine

Defendant argues That his right To effective assistance of counsel was denied That is guaranteed by The sixth amendment of The United States Constitution

defendant contends That counsel had knowledge of The defendants mental condition and failed To take The proper action To assure a fair just plea , by not investigating The defendants mental health even though counsel was informed That The defendant was being seen by a psychiatric Doctor at Catholic Charities where The defendant was diagnosed with Major Depressive Disorder , Severe , with out Psychotic features he was proscribed Paxil and Zyprexa (an anti-psychotic agent also used to treat bi-polar disorder) This Leaves in question The knowingly of accepting The plea Exhibit D

As The sixth Amendment requires That counsel will be advocate for The defendant where Beth Savitz failed To file under Superior Court Criminal Rules 12.2(B) where The condition of The defendant was evident

on or around 4/13/2005 The new appointed Counsel had a Psycho-Forensic Evaluation done in The report The evaluator James Dunn MHS, C.A.C, A.D investigated The condition of The defendant during The summer of 2004 from 4/15/2004 to 11/23/2004 The conclusion That The evaluator came to is quote Based on The records from Catholic Charities it appears That despite receiving Treatment Mr Pepper was not mentally or emotionally stable throughout This entire period

As The report shows That The Superior Court Criminal Rule 32 is in question where The defendants mental state was not in The state required To understand The Law or The Law when it pertains To The plea due to duress mental stability

As The defendant has shown in other grounds That now he understands more clearly what he is being charged with and as other grounds show The error of Rule 32(3) errors with sentence recommendation The error of counsel in objecting or attacking These errors Just as The mental state only now does The defendant understand The errors

Even with The charge under 11s1109 dealing in is a crime That The defendant is not guilty of and evidence will prove That fact dealing is a act of sending transmitting

defendant contends That if counsel had sought out a medical evaluation in lines with SuperCourt Rule 12.2.(B) The plea would have been delayed To stabilize defendants condition The defendant did loose his son during this time which devastated The defendant being he was a single father This caused prejudice where The plea was accepted without The proper knowledge and knowing due to The Paxial and Zyprexa where The plea stats There was no medication counsel knew defendant was on and counsel filled out T.I.S. sheet with Her Beth Savitz hand writing The defendant could not fill it out due to emotional distress yet counsel did not care of The condition of The defendant against professional conduct rules of attorney's

if not for the ineffectiveness of Beth Savitz est and the lack of investigation into the mental well being of her client after knowing the condition of her client. This was unexcusable and fell far below any standard of reasonableness expected of a attorney defending there client and if not for this behaviour of counsel the defendant would probably not have accepted the plea and may had went to trial instead.

The defendant would not have plead guilty to the 15 teen charges under 11s1109 Del Code

Attorney and Client 106

Defence counsel is expected to be an advocate for his client in any adversary proceeding but must function as a counselor as well U.S.C.A. Const Amend 6

Criminal law 641.3

Defendant is entitled to reasonably competent assistance of counsel at each stage of the proceeding from pre plea to advocacy at sentencing U.S.C.A. Const Amend 6

Superior Court Criminal Rule 12.2 B

Expert Testimony of Defendants mental Condition if a Defendant intends to introduce expert testimony relating to a mental illness Defect Psychiatric Disorder or any other mental or emotional condition of the defendant bearing upon the issue of guilt the defendant shall within the time provided for the filing of pretrial motions or at such later time as the court may direct notify the attorney general in

in writing of such intention and file a copy of such notice with the Prothonotary. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

Ground Ten

defendant argues his right To effective Counsel guaranteed by The sixth Amendment was denied and as so did cause prejudice To The outcome of The defendants case where weren't for The errors of counsel Beth Savitz esq The defendant may not had Taken The plea or The outcome of The plea would had been different and The evidence in The Search Warrant should had been suppressed

Counsel Beth Savitz esq did fail To investigate and file suppression of evdence where during The execution of a Search Warrant on Jan 22 2004 Detective Wood of The Delaware STATE Police did abuse The particularity of The rules and law under The fourth amendment search and seizure

As The Supreme Court has recently added The uniformly applied rule is That a search conducted pursuant To a warrant That fails To conform To The particularity of The Fourth Amendment is unconstitutional

Del Code 11 2301

As To what is To be Taken nothing is To be Left To The discretion of The officer executing The warrant

Dect Wood did during The search warrant seized/detain The defendants son 9 year old Matthew Pepper against The will of The defendant with no permission against The will of The child did question The defendants son asking sexual questions as well as questions about The

victum in the instant case asking were people slept whether They were There and question's about porn . "Affidavit inclosed"

where The defendants son was & The only witness for The defendant and The unlawfull questioning was "Rummageing for information". Detective Wood as a experanced officer had To know That The questioning would be suppressed in a Trial, and That Fact "proves" That The intent was not for Thedefendant's son's welfair, but was pure "rummaging , a fishing expidition" To gather any information he could . as The type of questions asked would show That intent and conspiracy To "seize information"

This inappropriate questioning did cause extreme Prejudice To The defendant as well as against The scope of constitutional search warrant under The Fourth Amendment

Where The close relation ship between The Prosecution and detective Wood as ground (6) would show , The assures or questions can be use To "coach" The victim/plaintiff for a Trial where The defendants son is a witness for The defendant

Counsel's failure To address The abusive way The son of The defendant was seperated, where There was no arrest, To The secret questioning , To no other adult present, no permission and when asked To stop by The defendants sister he refused actually grabing The coat of The defendants son. This was not investigated or The possibal use of The information was not questioned by counsel Beth Savitz esq or Sheryl Rush-Milstead esq and This caused prejudice where The Search Warrant should have been found Unconstitutional under The Fourth Amendment if it weren't for The error's of counsel Beth Savitz esq

when law enforcement officers grossly exceed the scope of a search warrant in seizing property. The particularity requirement is transformed into a general warrant thereby requiring suppression of all evidence seized under that warrant.

10th Cir 842 F2d 1194-1198

Wholesale suppression is appropriate under the flagrant disregard standard when the officers transform the search warrant into an impermissible "general search" by ignoring the terms of the warrant and engaging in indiscriminate fishing.

979 F2d 714 717 (9 Cir 1992)

Constitutional law

The Fourth Amendment confines an officer executing a warrant strictly within the bounds set by the warrant.

403 US 388-394

A search warrant authorizing seizure of materials protected by the First Amendment must at the very least describe those materials with scrupulous exactitude in order to be constitutional. Del Coletta - 2301

As to what is to be taken nothing is to be left to the discretion of the officer executing the warrant. 11-2301 This rule was broken and counsel failed to attack or attempt to suppress. This is representation that fell far below the strictland standard and if it weren't for counsel's error there no question the outcome would have been different. A seizure within meaning of the 14 amend occurs when a subject or suspect is physically forced to stop or when a subject submits to a show of authority by the police.

Quarles v State 696 A2d 1334 Del 1997

When evaluating whether a seizure has occurred a reviewing court looks to see if under all of the circumstances surrounding the encounter the police conduct would have communicated to a reasonable person that he/she was not free to terminate the encounter with the officers

114 696 A2d 133

The essential purpose of the prescriptions in the Fourteenth Amendment is to impose a standard of reasonableness upon the exercise of discretion by government officials including law enforcement agents in order to safeguard the privacy and security of individuals against arbitrary invasions

Delaware V Prouse 440 US 648 49 SCt
59 L Ed 2d 660 1979

When detective wood held the coat of the defendants son and when the separation occurred seizure occurred and was a illegal seizure property had not been removed by this time

The wording in the search warrant was possibly too broad

defendant has been unable to get transcripts from counsel or Prothonotary's office

Ground Eleven

defendant argues That he was denied his right To effective assistance of counsel guaranteed by The sixth Amendment due To counsels failure To investigate The evidence That was at Troop 3 State Police

defendant contends That counsels failure To perform a "reasonable substantial investigation" as required by The sixth Amendment described by The United Supreme Court where only after such an investigation can counsel make a strategic choices To defend The client. Defendant contends That he is not guilty of 11§1109 Evidence will show. (page 5)

defendant contends That counsel Beth Savitz esq did not look at The photo evidence or data contained in The computer or hire a computer specialist To perform The duty for her and failed after repeated request of The defendant To view The photo evidence To Take The defendant To Troop 3 and viewe The evidence

"Troop 3 Log book will Prove This"

Where The state contends That under The Charge Del code 11§ 1109 unlawfull use of Computer To Depict a child engaging in a prohibited sexual act

where 11§ 1109 states 1 a person is guilty of dealing in child porn . This statement sets The thrust for The rest of The Law . when The defendant is charged with quote "by means of a computer intentionally Transmit an image" --- . This is ambiguous where 11§ 1109 is a law which pertains To one dealing in child porn not depict

and further where defendant is charged with The use of a computer To "Depict" This word Depict infers That one made The image or photo not download . Then further The use of a computer To Transmit an image of a child --- under Del Code 11 1109 This is a law for The purpose of "dealing in child pornography" not downloading and further The statute includes The crime of possession as also in Del Code 11§ 1111 where it says "did knowingly possess a visual depiction" This is covered in Del Code 11 § 1109 (3) --- such an act The possession or showing of such motion picture' and in 11§ 1109 (4) or otherwise possesses any photograph , These are ambiguous and over broad , These are covered in ground (15) and 11§ 1111 is a lesser included crime in 11§ 1109

The question of law presented is a question that counsel should have seen where The defendant did "not deal in child porn" yet was charged under a statute that can only be interpreted as dealing Also The statute is no different than possession and would constitute "double jeopardy" if used as broad as The State uses it To charge The defendant and did cause prejudice where The defendant received prison time

IF Beth Savitz counsel had investigated The law This would be apparent and a question of The ambiguity and overly broad interpretation of These laws would been questioned but They were not investigated

Ground Twelve

Defendant argues That he was denied his right To effective Counsel as required by sixth amendment of The United STATES Constitution

Due To Beth Savatz counsel for The defendant failure To properly investigate The charges The defendant was charged and indicted unjustly and unconstitutionaly

Where charge of unlawfull use of computer To Depict a child engageing in a prohibited sexual act violation of Title 11 section 1109 of Delaware Code is not The crime described by Del Code 11& 1109 where "To use a computer To depict" is not a crime under 1109 Exhibit (E)

11&1109 Del Code is a statute of Dealing in As follows
1109 Unlawful Dealing in material depicting a child engageing in a prohibited sexual act', unamended

Due To counsels ineffectiveness and The lack of simply reading The Del Code This caused The defendant extreme prejudice where if not for counsels neglect The defendant would had never Taken a plea because The defendant did not "deal" or "Trans mit" as required To find guilt under 11&1109 But where The charge in The indictment describes only "To Depict" This is not The crime 11&1109

where counsels effectiveness fell far below
The Strickland standard

Where went for counsels ineffectiveness The
15 charges under Del Code 11 1109 would had
been dismissed by Grand Jury and if not The
defendant would not have plead Guilty To The
offence's The evidence will show That The defendant
did not "Trans mit" any image as described by
The indictment only due To Counsel failure To
inform The defendant of The law did result in
This error

Thus caused The defendant To recieve a plea That
was unfair and a unjust sentence

Ground Thirteen

Defendant argues That his rights were denied under The "Fifth Amendment" where The defendant was denied access To The Rules and law pertaining To Grand Jury where , counsel failed To inform The defendant of his rights or inform The defendant of law or To charges That were To be presented To The Grand Jury and The right To due process under The "Fourteenth Amendment" were denied

Counsel Told The defendant That he did not need To be at The Grand Jury hearing and That iT wasn't That important To be There This caused The Grand Jury To decide on a unknown charge

The fact That indictments ~~1K04030351 - Through 1K04030365~~ 1K04030351 - Through 1K04030365 and indictments 1K04030366 - Through 1K04030380 are in fact double jeopardy where 1K04030366 → 80 are included and lesser crime of 1K04030351 → 65 if interpreted as 11 § 1109 Del Code describes not as indictment words iT

Also The fact That 1K04030351 → 65 are not written in plain concise or definitely language and The defendant can not by The language weather he is being charged with depiction , Transmitting , or dealing iT is not clear enuff To prevent a claim of double Jeoperdy or show evidence EXZIBT (E) EXZIBT (F)

And The grand Jury could not have ruled as To The charge properly or justly as written

where 11 § 1109 should be "Transmitting for The purpos of Dealing " This fact was not shown because The defendant did not Transmit any image evidence will prove This

Ground Fourteen

Defendant argues That he was denied his rights under The Fifth Amendment of The United States Constitution and Failure of The indictment To meet The requirements of Superior Court criminal Rule 7(c)(1) did cause prejudice where The citation was misleading as To The statute , and was not plain, concise, or definitely written , as required . Where The indictment fails To define Delaware Code 11 § 1109 as iT was intended by legislation and The statute

The indictment as written fails To state The essential facts constituting The offense charged (dealing) The indictment fails To be concise enuff To inform The defendant of what charge That The defendant may prepare a defense or invoke The Double Jeopardy Clause when appropriate

The indictment fails To state The material element of The offence

The indictment reads as follows

unlawfull use of Computer To Depict a child engaging in a prohibited sexual act a Felony in violation of Title 11 section 1109 of The Delaware Code of 1974 as amended

Monty C Pepper on or between The 9th day of January 2004 and The 22 day of January 2004 in The County of Kent State of Delaware did by means of a computer intentionally "Transmit" an image of a child engaging in a prohibited sexual act or The simulation of same

The STATUTE Delaware Code 11 § 1109 reads as follows:

Del Code 11 § 1109 "Unlawfully Dealing" in child pornography - ~~amended~~ 72 Delaw 48 substituted child pornography for "material depicting a child engaging in a prohibited sexual act" in the introductory language

The indictment makes no mention of "Unlawfully Dealing" which is the crime as described by 1151109

The wording "unlawfull use of Computer" To depict or "intentionally Transmit an image of a child engaging in" is not and does not describe dealing in any fashion depict EXZIBIT (E)

further depict is defined as one making a photo drawing picture ect. and Transmit means "To send"

These descriptions are not sufficiently specific to enable defendant to plea double jeopardy or defend himself or for Grand Juries determination

The Grand Jury is in question where what facts did they relied on by the wording of the indictment would be far less than the "Unlawfull Dealing" which would require more than mere possession and even Transmit would require digital evidence of sending information to some other party not mere possession < defendant request Grand Jury Transcripts and number of Jungs and who were Jungs

Due To The States wording The grand Jurys decision To indict The defendant under Del Code 11§1109 is TantEd and in error

Where if The Jury had investigated 11 1109 They could had concluded That The indictment language was not clear or concise and no evidence To support The indictment

And That use a computer To "depict" and "Transmit" are not one part of The STATUTE, when it comes To use a computer To depict" as in possession 11§1111

And evidence could not support "Transmit" because There would have To be a receiver of The Transmition and under 11 1109 There would have To be a intent or fact of Dealing and There was not

The defendant "did not" Transmit or Deal in child pornography As STATUTE 11§1109 describes But The indictment failes To describe

There for The indictment is flawed The crime is not defined To The Grand Jury and failes To comply To Superior Court Criminal Rule 7(c)(1) and should cause The charge To be dismissed where The defendant received prison Time for This error of The court and of Defendants Counsel

Ground Fifteen

Defendant argues That he was denied his rights To due Process of The Fourteenth Amendment and Double Jeopardy of Fifth Amendments double Jeopardy clause - where Del code 11 § 1111 is a same included offence as described in Del code 11 § 1109 and is ambiguous and is a lesser included There for ~~had~~ prejudice The defendant by being sentenced by more add offences

STATUTES Key 19

when There is more than one reasonable interpretation of a statute the statute is ambiguous

STATUTES Key 184 215

Ambiguous language requires not only The ordinary meaning of the words but also how it relates to The over all meaning , setting and purpose of The act

Del code 11 § 1109 Unlawfully dealing in child pornography

at The begining of each section and subsection The ordinary meaning and Legislative intent is made clear as well as The code heading "Unlawfully Dealing" This language of each subsection and intent is written as fallowes

A person is guilty of dealing in child pornography when
 (1) The person knowingly ships Transmits Mails or Transports by any means ---

This clearly means 'sending' where each word is and has a clear definition of send and The opposit is used in 1109 (2) and subsection (4)

(2) a person knowingly receives for the purpose of selling or sells any --

This section can only be interpreted as it says in its own meaning "for the purpose of selling"

(3) The person knowingly ^①distributes or ^②disseminates" by means of computer or any other electronic or digital method or by ^③"shows or viewings" any motion picture video or ^⑤other visual depiction of a child engaging in a prohibited sexual act or the simulation of such an act. The ^④"possession" or showing of such motion picture shall create a rebuttable presumption of ^⑥ownership thereof for the purposes of ^①distribution or ^②dissemination:

This section can only be interpreted as it says a person ^①(distributes) meaning "To divide and give or share or deal out" or ^②(disseminates) meaning "To spread"

^③(shows or viewings) meaning "To allow To or cause To be seen To offer for inspection or viewing"

^④(Possession) meaning "To become The owner or possessor of" This is and has The same meaning of Del Code 11§1111 where 11§1109 does dose include "^⑤other visual depiction" but Then describes The ^⑥ownership For the purposes of ^①distribution or ^②dissemination

where Possession is The presumption of ownership in 1109(3) Fn ^④ describes "The possession" and in 1109(4) or otherwise possesses. This is no different Than Del Code 11§1111 possession and is a lesser included crime

(4) The person by means of a computer intentionally compiles enters accesses Transmits receives exchanges disseminates stores makes prints reproduces or otherwise possesses any photograph image file data or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such a act For the purposes of this subsection conduct occurring outside the state shall be sufficient to constitute this offence if such conduct is within the terms of § 204 of this title or if such photograph image file or data was compiled entered accessed Transmitted received exchanged disseminated stored made printed reproduced or otherwise possessed by through or with any computer located within Delaware and the person was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility or (5) The person knowingly advertises promotes presents describes Transmits or distributes any visual depiction exhibition display or performance with intent to create or convey the impression that such visual depiction exhibition display or performance is or contains a depiction of a child engaging in a prohibited sexual act or in the simulation of such an act

22 Del laws ch 480 substituted child pornography for material depicting a child engaging in a prohibited sexual act in the section heading in the introductory language and in the second paragraph in (4) rewrite (1) inserted or knowingly receives for the purpose -- simulation of such an act' following "such an act in (2) substituted "computer or any other electronic -- for shows or viewings any motion picture which shows" in (3) substituted data or other

Defendant received 3 counts and added prison time
Defendant is not Guilty of Dealing.
Defendant is not Guilty of Transmitting where
Transmitting is "sending" where under 1109(2) and 1109(4) both
describe receives as its meaning is clear "To get To Take or accept
Take possession" Transmitting "To send out To transfer from
one person or place To another "Forward" send To a receiver

If Beth Savitz esq counsel for The defendant had effectively
investigated The evidence will show That The defendant "did
not" transmit any image The digital evidence will prove
The fact with out doubt

Del. Code 11 § 1111 Possession of

A person is guilty of possession of child pornography when

- (1) The person knowingly possesses any visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act or
- (2) The person knowingly possesses any visual depiction which has been created adapted modified or edited so as To appear That a child is engaging in a prohibited sexual act or in the simulation of such an act possession of child pornography is a F Felony

Amendments

added "or any Computerized file" --- simulation of such a act in The first paragraph
and substitutes "class G Felony" for "Class A misdemeanor" in The second paragraph

Evidence will show facts put forth Grand Jury was in
error due To Language error The defendant did not send

Ground Sixteen

Defendant argues That he was denied his right To effective Counsel where The sixth Amendment guarantees The right To effective counsel under The United States Constitution where Counsel was unexperanced.

Defendant contends Beth Savitz esq admitted To The defendant That she had never handled a case such as ~~as~~ The defendants case and Told The defendant That she could handle iT

defendant contends That due To all The errors and ommisions and failure To investigate aspects of The instant case did cause prejudice in The out come of The defendants case and The grounds put forth in The Post Conviction Motion 61 proves her abillitys fell ~~below~~ below a reasonable standard described in strictland and if not for counsels ineffectiveness errors and failure To file proper motions The out come of The defendants case would had been verry different

Counsel Beth Savitz esq should had not Taken This case and The \$ 7000⁰⁰ paid To beth was not Justified by The defence she put forth on The defendants behalf Counsel should had withdrawn From The case early on when The first mistakes in court were made

Where at the first preliminary hearing counsel was unprepared and gave the defendant a pencil to write questions down because counsel did not take the time needed and required to present proper questions and at the same hearing made shocking actions after unexpected answers by Detective Wood and the failed to follow up with proper questions after that counsel allowed a lie by Detective Wood where he said he did not know where the files were stored when he had to know where they were they all were deleted.

Then in visitation modification of bail counsel failed to object to lies by prosecution.

Ground SevenTeen

51

Defendant argues his right To effective counsel under The Sixth Amendment of The United States Constitution was denied where Counsel for The defendant refused To contact or accept calls from The defendant by way of D.C.C. Phone collect call

where defendant made dozens of attempts To contact Beth Savitz as afitdavids () shows That Beth Savitz refused To contact and basicly said she was Too busy To Talk To The defendant if in fact what The DCC officers Contend as True in afitdavids in a civil case against DCC. EXZIBT(6)

defendant on Oct 24 2004 informed Counsel Beth Savitz esq That he wanted To replace her as Counsel due To he numours errors and with draw his plea . From That point unTill a hearing on 2/01/ 2005 where she was allowed To withdraw during This peroid counsel would not ansure request for reasons for The delay and That caused extream prejudice where being pretrial and being in segerated Protective Custody where attempts To gather Legal information was impeded

defendant sent Three letters To The Court James T Vaughn which were egnored and unanswered relating To The denial To courts and counsel

This period went from Oct - 2/1/05 and counsel though fired did not fulfill her duties where counsel having a paid Client could had and should had exhausted her duties to her client before moving on to a case where her client suffered denial of his constitutional right from Delaware Department of Corrections namely Delaware Correctional Center in Smyrna where counsel either refused to aid the defendant when she knew the defendants rights were being denied as well as the Court that received letters describing the abuses to the defendant and both Counsel and the Court ignored

Letters sent to the Court on 11/22/2005
1/31/2005 2/16/2005 that informed the court of the abuses of counsel and abuses of D.C.C. to the defendant a Pre Trial detainee

further more new counsel Sheryl Rush-Milstead refused to defend her client when she was informed of the abuses in Delaware Correctional Center saying her boss would not allow her to investigate the abuses as a pre trial detainee this was a denial of Constitutional right and caused the defendant mental and physical distress. and if either counsel or the court had investigated the prison could had been held accountable and the defendant could had gotten relief

This abuse was unconstitutional ignored by the court where by letter and in court on 2005

where The Court has a duty To uphold The law
refused To hear The defendants plea for help
This was nothing less Than abuse by The court when
They were made aware of a injustice and denial of
constitutional rights To a pre Trial non sentenced
defendant and as so showed prejudice Towards The
defendant, The responsibility of The court is That The
defendant is Treated Justly in all respects including
incarceration when The defendant has not been sentenced

Counsel's failed To fulfill her dutys as a advocate
for The defendant neither counsel demanded a investigation
of abuses To The defendant

Ground Eighteen

Defendant Contends That he was denied due process under The United States Constitution 14th Amendment

The Classification of "violent" crime is more than a simple Classification iT is a fact of a crime .

Where The states Trys To make a general Classification of "Violent" crimes where The act of violence has not occurred

As in Del code 11§ 772 part 2 makes mention of different levels of violence and distinguish this violence in 11§ 772 (2) A as well in Del Code 11§ 1111 and 11§ 1109 The statute is ambiguous and unconstitutional because iT carries with it a "punishment of iT's own" where under sentencing guidelines The classification would cause prison Time over rehabilitation and increase in Time of sentence Length and higher Level of security while in Level 5 , which is not a proven fact of a crime as required by The 6 amendment and 14th Amendment

The violent Classification under Del Code 11 § and as a law and statute when a person is charged with a crime he must be afforded an opportunity To defend him self . The defendant was convicted without a opportunity To Rebut The facts That The court uses To sentence him .

Defendant rights were denied under The First Amendment and Fifteenth Amendment and The Twenty Fourth Amendment where defendant's right To vote was abridged by The state of Delaware against The Constitution of The United States

defendant's right To vote was denied by state law () and is a punishment not a consequence of a crime in Delaware where denial or restrictions of ones rights can only be done with due Process and only Taken by That process, further more under Delaware Code These are added punishment And This punishment is not associated with The crime's in question and is applied To a broad population of citizens and denies Them The most Fundamental form of free speech of The First Amendment and The Court failed To present This as a punishment at any stage of The proceeding This implicates The Fourteenth Amendments due Process

The statute concerning denial of the right To Vote does not conform To, or fall within The Compelling interest Standard

Compelling interest Standard

Under The compelling interest Standard a challenged law must be precisely Tailored To The objective and even if The classification drawn may have some Tendency To promote a

permissible interest The law can not stand if it excludes too many people who should not and need not be excluded
 343 F supp 143 Delct 1972

Where The defendant along with possibly millions or at least hundred of thousands of citizens in Delaware have been denied the ~~most~~ most fundamental right where as The constitution states in The First Amendment (from 1970 To date)
 Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or "abridging the freedom of speech" or of the press or the right of the people peaceably to assemble and "to petition the Government for a redress of grievances"

This statute denying the right to vote () also not only denies the fundamental right to free speech if denies the defendant the right to petition the Government for a redress of grievances, under the First Amendment

for the defendant to exercise the right to redress he must retain the right to vote or the right to redress as well as free speech would be meaningless where the only consequence a Government or Government officials can endure is one from the voter

A democratic processes are legitimate only if the ingredients of free and fair elections are secured These ingredients are secured and protected by the right to vote and freedoms of speech press and assembly
 CONST 1st amendment U.S.C.A. law

The denial of the right to vote denies the fundamental democratic processes and creates a

form of Government not intended under The Constitution where The minority can not participate in The democratic process To stop unjust laws That affect There Freedoms and libertys directly against The intent of The Founding Fathers and The Constitution

further more The Fifteenth Amendment states The right To vote shall not be denied or abridged by The United States or by any State on account of race color or previous condition of servitude . The language is clear That The intent of a democratic government is citizen participation , further proof of The intent of The Constitutions right To vote as speech can be found in Article 1 section 2 " By The people " Article 2(1) Article 4 section 2 Article 5 and in 17th Amendment " elected by The people " 19 Amendment 24th Amendment 26th Amendment , All of which makes classes of citizens who were denied The participation in The democratic process elegable To vote and participate

The statute To deny a citizen The right To vote has only one "rationally related state interest"

That interest is To prevent citizens from changing or challenging The elected representatives , who only by voting can one change , prevent , or uphold a law That seeks To oppress The Free speech or liberty , even The right To vote of a citizen who may disagree and can vote The oppresser out of office and replace The representative with one who thinks as They do as The Constitution intended

This state interest To prevent citizens from freeing them self from oppression is "Laws of a State" by the means intended by the Constitution and democracy is it self a denial of democracy and is illogical unreasonable and inconsistent with intent of a democracy

This is proof of Prejudice in the defendants case where without the right to vote the defendant can not challenge the law or punishment of the state of Delaware and is unconstitutional under a Fair and Equal Democracy

To justify the state in its authority in behalf of the public it must appear that the interest of the public as distinguished from those of a particular class demand such interference that the means employed are reasonable necessary for the accomplishment of the purpose and that they are not unduly oppressive of individuals statutes

The statute in question is unduly oppressive

further the Equal Protection Clause involve charges of singling out members of a vulnerable group for unequal treatment or charges that a law or policy makes irrational distinctions between groups of people 367 E3d 703 53 F 3d 176-178 7th Cir 1995

Taking the right to vote away from the defendant in the instant case is illegal and unconstitutional as put forth and defendant is entitled to a reversal of that punishment

Ground Twenty

Defendant argues his rights were denied under the due process clause of the Fourteenth Amendment and equal protection clause of the where the court revoked the drivers license of the defendant

defendant contends that at no point did the court on record make the defendant aware of the punishment of revocation of Delaware Drivers license nor did counsel for the defendant make him aware of the loss of license as a punishment. denying due process

defendant contends that only on the T.I.S. sheet did the revocation of license appear and counsel said that did not pertain to the defendant

defendant contends that the statute is ambiguous and used with out discretion with just cause and without a rational relation to the crime in the instant case or without rational relation to the actions or inactions of the defendant and goes against the Equal Protection Clause where the courts impression of the offence appears to be the only reason for the revocation of Delaware Driver license

The statute has no legitimate relation to the offence in the instant case and there is no rational in connecting a drivers license with a criminal act not involving a traffic statute or a vehical statute . it appears to be more in a vindictive nature than justice and a added burden on the defendant unjustly applied



PUBLIC DEFENDER OF THE STATE OF DELAWARE
SYKES BUILDING
45 THE GREEN
DOVER, DELAWARE 19901

LAWRENCE M. SULLIVAN
PUBLIC DEFENDER

SHERYL RUSH-MILSTEAD
ASSISTANT PUBLIC DEFENDER

ANGELO FALASCA
CHIEF DEPUTY

TELEPHONE
(302) 739-4476

October 20, 2005

Monty Pepper
SBI# 156920, Unit V
DCC
1181 Paddock Road
Smyrna, DE 19977

Dear Mr. Pepper:

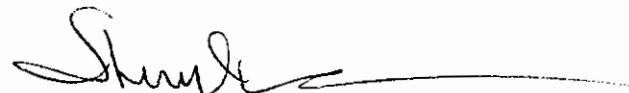
I looked through the file but could not locate a copy of the Plea Agreement, so by copy of this letter to my legal assistant, I will ask her to locate one and send it off to you, without need of further communication to slow the process down.

With regard to the Pre-Sentence Report, that is produced for the date of sentencing only. Attorneys are not permitted to make copies of it, nor to share it with any one besides the client on the sentencing date, after which it must be returned to the Court. However, if you have a copy of your sentencing colloquy then you can review it to see if the Court erred. I will also ask my legal assistant to procure a copy of the Sentencing Order, and if it appears that you need a copy of the actual proceeding, I will see if our office will request it or if you should, as you would do so *en forma pauperis*, so that it would be produced without any costs to you.

I apologize for the tardiness in responding, but I was hospitalized with appendicitis on 08.28, wasn't released from hospital until 09.04, and just returned to work this week.

Monty Pepper
October 20, 2005
Page 2.

Sincerely,



Sheryl Rush-Milstead

SR-M/wp

TRUTH-IN-SENTENCING GUILTY PLEA FORM
IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

STATE OF DELAWARE

v. PEPPER, Monty C.ID: 0402012084-0401017318CRA: IK-04-03-0351→03fo; IK04-03-*The defendant must answer the following questions in his or her own handwriting.*Date of Birth 032859Last grade in school completed 11th grade

Have you ever been a patient in a mental hospital?

 Yes No

Are you under the influence of alcohol or drugs at this time?

 Yes No

Have you freely and voluntarily decided to plead guilty to the charges listed in your written plea agreement?

 Yes No

Have you been promised anything that is not stated in your written plea agreement?

 Yes No

Has your attorney, the State, or anyone threatened or forced you to enter this plea?

 Yes No

Do you understand that because you are pleading guilty you will not have a trial, and you therefore waive (give up) your constitutional right:

- (1) to be presumed innocent until the State can prove each and every part of the charge(s) against you beyond a reasonable doubt;
- (2) to a speedy and public trial;
- (3) to trial by jury;
- (4) to hear and question the witnesses against you;
- (5) to present evidence in your defense;
- (6) to testify or not testify yourself; and,
- (7) to appeal to a higher court?

 Yes No

OFFENSE	STATUTORY PENALTY		DIS GUIDELINE
	Incarceration	Amount of Fine (range if applicable)	
Pape 2	10-25y	discretion	2-5y L v / 10yr
Use Computer for Child Sex (2x)	0-8y (x2)	discretion	up to 62y L v
Poss C.a.i. from (3x)	0-3y (x3)	discretion	up to 9m L v

TOTAL CONSECUTIVE MAXIMUM PENALTY: Incarceration: 50y. Fine: discretion

NON-CITIZENS: Conviction of a criminal offense may result in deportation, exclusion from the United States, or denial of naturalization.

Do you understand that, if incarcerated, you will not be eligible for parole, and the amount of early release credits which you may earn will be limited to a maximum of ninety (90) days per year?

 Yes No

Is there a minimum mandatory penalty?

 Yes NoIf so, what is it? 15y.

Is there a mandatory revocation of driver's license or privileges for this offense or as a result of your plea?

 Yes NoIf so, what is the length of revocation? years Yes No

Has anyone promised you what your sentence will be?

 Yes No

Were you on probation or parole at the time of this offense? (A guilty plea may constitute a violation.)

 Yes No

Do you understand that a guilty plea to a felony will cause you to lose your right to vote, to be a juror, to hold public office, and other civil rights?

 Yes No

Have you been advised that this is an offense which results in the loss of the right to own or possess a deadly weapon?

 Yes No

Have you been advised that this is an offense which requires registration as a sex offender?

 Yes No

Are you satisfied with your lawyer's representation of you and that your lawyer has fully advised you of your rights and of your guilty plea?

 Yes No

Have you read and understood all the information contained in this form?

 Yes NoBen Decker

Defense Counsel

Print name: Ben Decker Savin

Date

Monty Pepper

Defendant

Print name:

Superior Court in the State of Delaware, Kent CountyPLEA AGREEMENTState of Delaware v. Mony C. PepperCase No(s): 0402012084 Cr.A.#s: _____

- Title 11HAB. OFFENDER _____ BOOT CAMP ELIGIBLE INELIGIBLE
 RULE 11(e)(1)(C) — If out of guideline, reason is as follows: _____
 Title 11, §4336, sex offender notification required Title 11, § 9019(e), forensic fine \$100(F), \$50(M)

Defendant will plead guilty to:

Count	Cr.A.#	Charge	LIO if applicable
1	K04-02-0594	Rape Second Degree	
3	K04-03-0351	Use of Computer for Child Prohibited Sexual	
4	K04-03-0352	Use Computer Child Prohibited Sexual Act	
18	K04-03-0366	Poss Child Pornograph	
19	K04-03-0367	Poss Child Pornograph	
20	K04-03-0368	Poss Child Pornograph	

Upon the sentencing of the defendant, a nolle prosequi is entered on the following charges/ all remaining charges on this indictment: 0401017318 & 0402012084

Count Cr.A.# Charge

Sentence Recommendation/Agreement: PSI Immediate Sentencing
 State agrees not to recommend more than 10 yrs.
 or less sentencing

State and Defendant agree to the following:

- Restitution: _____
 No contact w/ Brittany Bartsch & her family
 Other Conditions:
 forfet computers; no access to computers;
 no contact w/ children 18 yrs - violent
 type of contact (if any) for mother to be determined
 by Court & PST

DAG: Marie O'Connor Graham

PRINT NAME

Marie O'Connor Graham

SIGNATURE

DEF. COUNSEL:

Beth DeBonit Sauer

PRINT NAME

Beth DeBonit Sauer

SIGNATURE

DEFENDANT:

J.D.Date: 08/16/07

**PUBLIC DEFENDER OF THE STATE OF DELAWARE**

Sykes Building
45 The Green
Dover, DE 19901

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PUBLIC DEFENDER

JAMES F. DUNN, MHS, CAC-AD
PSYCHO-FORENSIC EVALUATOR

ANGELO FALASCA
CHIEF DEPUTY

TEL: (302) 739-4476 ext. 217
FAX: (302) 739-7213

Psycho-Forensic Evaluation

Client: Monty Pepper

DOB: 03/28/1959

Age: 46

Pending Charges: Rape 1st, Endangering the Welfare of a Child, and Tampering with a Witness

Evaluator: James F. Dunn, MHS, CAC-AD

Date of Report: 04/13/2005

Referral Information: This client was referred for a psycho-forensic evaluation by his attorney, Sheryl Rush-Milstead, Esq.

Current Status: Mr. Pepper is a 46 year-old, single, Caucasian, male. He is currently incarcerated at the Delaware Correctional Center (DCC). He states that he did not commit the crimes for which he is accused. He admits that he had a serious addiction to adult pornography but believes that, because this information came out, it is being used to charge him with things that he never did. He denies viewing child pornography on the Internet purposefully. He states that, every once in awhile, while viewing pornographic images on the Internet, a child pornography site would "pop-up" on his screen, but he is adamant that he never tried to view child pornography and he has never molested or otherwise harmed a child.

Medical Status: Mr. Pepper states that he is in good general health and is not currently taking medications for any physical health problems.

Mental Health Status: Mr. Pepper was given a psychiatric evaluation at Catholic Charities, 1155 Walker Rd., Dover, DE 19904. At that time he was diagnosed with Major Depressive Disorder, Single Episode, Severe, without Psychotic features. He was started on Paxil (an anti-depressant also used to treat anxiety) and Zyprexa, (an anti-psychotic agent also used to treat bi-polar disorder) and appeared to make some progress although he

still experienced obsessive thoughts about his legal problems. During the entire summer of 2004 he appears to have been experiencing a great deal of stress and anxiety over his legal problems and the possibility that he may have to go to jail. Progress notes dated 4/15/2004, 4/28/2004, 5/18/2004, 5/26/2004, 6/3/2004, 6/10/2004, 6/24/2004, and 7/15/2004 appear to indicate that he was not doing well with resolving these issues. His last face-to-face contact with Catholic Charities was on 7/15/2004. Records indicate that he was compliant with treatment recommendations and medications prescribed by Dr. Borer and that he participated in his therapy sessions. He was officially discharged from Catholic Charities on 11/23/2004. The reason for the discharge is listed as "Client refused additional treatment." However, Mr. Pepper states that this is not accurate. The reason treatment ended when it did was because he had been arrested and incarcerated. Based on the records from Catholic Charities, it appears that, despite receiving treatment, Mr. Pepper was not mentally or emotionally stable throughout this entire period. In fact, Catholic Charities indicate in their records that he was still in need of treatment and medication at the time treatment terminated.

Substance Abuse: Mr. Pepper states that he began smoking marijuana at age 15. He admits that he used cannabis on a regular basis "for years" but he denies that he has a drug problem and does not feel that he needs treatment for substance-related issues. No other use reported.

Family: Monty Pepper was raised in an intact family. He reports that he is an only child. He characterized his childhood as "happy and peaceful." He states that he currently still has good relationships with his parents and describes them as "very supportive." Mr. Pepper has one son, Matthew Pepper age 10, and states that his relationship with his son is "very strong." He denies any history of physical or sexual abuse.

Summary: Monty Pepper presents as an intense, nervous individual with a tendency toward obsessive/compulsive thoughts and behaviors. Based on an interview conducted with Mr. Pepper at DCC on 03/21/2005, he appears to be experiencing ongoing symptoms consistent with clinical depression and anxiety. A short screening for competency appears to indicate that he understands the nature of the charges he is facing, the possible outcomes if he is convicted, and the roles of judge, prosecutor, and defense attorney in the legal process. While Mr. Pepper does appear to be experiencing ongoing mental health problems, he states that they are related to his legal issues, and that he does not believe that they will continue once his case is resolved. This may not be entirely valid based on the client's history of obsessive thoughts about pornography and compulsive behavior related to those thoughts. He appears to lack insight into his own mental health issues. Based on this information, it appears that Mr. Pepper is still in need of treatment for mental health issues.

Sentencing Recommendation: Given the current pending charges, it is my respectful recommendation that Monty Pepper be considered for the minimum sentence allowable by statute. In addition, he should have a mental health evaluation and comply with any medication/treatment recommended.

Respectfully submitted,

James F. Dunn, MHS, CAC-AD
Psycho-Forensic Evaluator
Office of the Public Defender

COUNT 3

T K04-03-0351

UNLAWFUL USE OF COMPUTER TO DEPICT A CHILD ENGAGING IN A PROHIBITED SEXUAL ACT, a felony, in violation of Title 11, Section 1109 of the Delaware Code of 1974 as amended.

MONTY C PEPPER, on or between the 9th day of January, 2004 and the 22nd day of January, 2004, in the County of Kent, State of Delaware, did, by means of a computer, intentionally transmit an image of a child engaging in a prohibited sexual act or the simulation of same.

COUNT 4

T K04-03-0352

UNLAWFUL USE OF COMPUTER TO DEPICT A CHILD ENGAGING IN A PROHIBITED SEXUAL ACT, a felony, in violation of Title 11, Section 1109 of the Delaware Code of 1974 as amended.

MONTY C PEPPER, on or between the 9th day of January, 2004 and the 22nd day of January, 2004, in the County of Kent, State of Delaware, did, by means of a computer, intentionally transmit an image of a child engaging in a prohibited sexual act or the simulation of same.

COUNT 261 K04-03-0374

POSSESSION OF CHILD PORNOGRAPHY, a felony, in violation of Title 11, Section 1111 of the Delaware Code of 1974 as amended.

MONTY C PEPPER, on or between the 9th day of January, 2004 and the 22nd day of January, 2004, in the County of Kent, State of Delaware, did knowingly possess a visual depiction of a child engaging in a prohibited sexual act or in the simulation of a prohibited sexual act.

COUNT 271 K04-03-0375

POSSESSION OF CHILD PORNOGRAPHY, a felony, in violation of Title 11, Section 1111 of the Delaware Code of 1974 as amended.

MONTY C PEPPER, on or between the 9th day of January, 2004 and the 22nd day of January, 2004, in the County of Kent, State of Delaware, did knowingly possess a visual depiction of a child engaging in a prohibited sexual act or in the simulation of a prohibited sexual act.

COUNT 281 K04-03-0376

POSSESSION OF CHILD PORNOGRAPHY, a felony, in violation of Title 11, Section 1111 of the Delaware Code of 1974 as amended.

MONTY C PEPPER, on or between the 9th day of January, 2004 and the 22nd day of January, 2004, in the County of Kent, State of Delaware, did knowingly possess a visual depiction of a child engaging in a prohibited sexual act or in the simulation of a prohibited sexual act.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

MONTY C. PEPPER,)
)
)
Plaintiff,)
)
v.) C.A. No. 05-084-JJF
)
)
Warden THOMAS CARROLL, C/O)
BAMBIE THOMAS, C/O JAMES)
GARDELS, C/O THOMAS SEACORD)
)
Defendants.)

AFFIDAVIT OF BAMBIE THOMAS

I, Bambie Thomas, having been duly sworn according to the law, do hereby depose and state the following:

1. I am employed by the State of Delaware, Department of Correction at the Delaware Correctional Center ("DCC") near Smyrna, Delaware as a correction officer. I have been employed by the Department of Correction for 10 years. My duties include Correctional Sergeant. I have held this position since March 2002.
2. In response to a request from the State of Delaware Department of Justice, I am providing the following information regarding inmate Monty Pepper's legal phone calls.
3. The procedure for an inmate requesting legal phone calls to an attorney involves three steps. First, the inmate writes the attorney's name and phone number on a piece of paper, there are no specific forms for requesting legal phone calls, and the inmate then gives the paper to the lead worker, usually a Sergeant and then forwards the request to the Lieutenants office. Second, the Lieutenant or his designee (lead worker) then calls the attorney to set up a time for the attorney and inmate to speak on the phone. This is done to ensure that the attorney will be

available when the inmate is taken from his cell to the room where he can speak privately with the attorney. After the phone appointment has been scheduled, the inmate is notified. At the time of the appointment, the connection is made with the attorney and the inmate is taken to the recreation room where he can have a private conversation alone.

4. In the autumn of 2004, inmate Pepper made a request for a call to attorney Beth Savitz. According to procedure for assisting inmates in making calls to their attorneys, I first called Ms. Savitz's office to arrange an appointment for her to speak with inmate Pepper over the phone. Ms. Savitz's secretary stated that Ms. Savitz was involved in a murder trial and would not be able to speak with inmate Pepper for several weeks. This response was reported to inmate Pepper.

5. On another occasion, after the first call to Ms. Savitz, inmate Pepper requested another call to the attorney. This time, when I placed the call to Ms. Savitz's office, I was informed that Ms. Savitz filed a motion to withdraw as inmate Pepper's attorney. Therefore, she was not going to arrange to speak with him. This response was reported to inmate Pepper.

6. Inmate Pepper continues to have access to legal phone calls if he has an attorney who will accept his calls.

7. I have made these statements based upon my personal knowledge, specialized training, and experience as an employee of the Department of Correction.

Bambie Thomas
Bambie Thomas

SWORN TO AND SUBSCRIBED BEFORE ME THIS 20th DAY OF January
2006

State of Delaware)
County of New Castle) SS.

Affidavit of: Monty Pepper
Dated: Jan 31 2006

AFFIDAVIT

I, Monty Pepper, being first duly sworn deposes and says that the foregoing statement is a true and correct observation of what occurred on the above date herein at/in _____ located in the Delaware Correctional Center, Smyrna, Delaware, in that I was a part of or witnessed the incident described hereina. I would clearly state under penalty of perjury of the laws of the State of Delaware.

On January 22 2006 During The execution of a search warrant detective Wood of STaTe Police did use his police power To seperate me from my son matTHEw Pepper 9 years old Detective Wood did not informe me That I was being detained or arrested no meranda rights were given. When my sister came To pickup my son As I was getting my son ready To walk out To her car detective Wood said he would I said That I would detective Wood Then with a force full voice said NO you will stay here and he would walk him (my son) out To my sister against my will and son's will. After getting outside Detective Wood started questioning my son without permission Asking a wide range of questions from question about The Plaintiff The weekend in question To sexual questions. This he attempted To do in secret and was caught by my sister Donna Anshback who attempted To stop him at one point Dect Wood holds my sons coat To stop my son from going To my Affiant Sisters car

Monty Pepper
Signature

Print Name
Delaware Correctional Center
Smyrna, Delaware 19977

SWORN TO AND SUBSCRIBED before me this 2 day of Feb, 2006.

My Commission Expires: Oct, 2006

Edward Johnson
Notary Public